REMARKS

Claims 1-20 are pending in the application. Claims 1-20 have been rejected under 35 U.S.C. § 103(a) as being anticipated by Wildfeuer et al. (U.S. Patent No. 6,298,055) in view of applicant's admitted prior art. The Applicant respectfully traverses the rejections. Of the Claims, Claims 1, 7, 14, 19 and 20 are independent claims.

The Applicant claims a method and apparatus for identifying the type of audio stored in the payload of a data packet. The state of a non-speech identifier included in a header in the received data packet identifies the type of audio stored in the payload of the received packet as non-speech or speech. Jitter buffer latency can be modified in a receiver dependent on the state of the non-speech identifier included in the header. In one embodiment, a user definable marker field in an RTP header is defined as the non-speech identifier. (*See* Page 6, lines 17-22; Page 7, lines 4-9 in the Applicant's specification as originally filed.)

Wildfeuer is directed to a transmitter that detects DTMF symbols in a digitized audio stream and stores the DTMF symbols in the payload of a packet. (*See* Wildfeuer Abstract and Col. 2, lines 42-57.)

Contrary to the Examiner's statement at page 3 of the instant Office Action, Wildfeuer does not teach or suggest storing "a non-speech identifier with the audio in the data packet, the non-speech identifier being stored in a header of the data packet" as claimed by the Applicant in independent Claim 1. Instead, Wildfeuer merely identifies a DTMF symbol in the digitized audio and stores the DTMF symbol (as received) in the payload of a packet prior to transmitting the packet. In contrast, the Applicant's claimed non-speech identifier identifies the type of audio stored in the payload and stores that information in a header of the data packet separate from the audio. Thus, Wildfeuer's discussion of a DTMF symbol stored in the payload of a packet does not teach or suggest the Applicant's claimed "non-speech identifier being stored in a header of the data packet".

The prior art RTP header referred to in the Applicant's specification does not teach or suggest a non-speech identifier being stored in a header of the data packet (*See* Fig. 3; Fig. 4; Page 2, lines 11-13 and Page 6, lines 13-22 of Applicant's specification as filed) The prior art RTP header is described in Real-Time Transport Protocol ("RTP") (Request for Comments ("RFC") 1889, Jan 1996) at http:// www.ietf.org/rfc/rfc1889.txt a copy of which was submitted in an IDS filed on May 15, 2000 and considered on March 26, 2002. The prior art RTP header does not teach or suggest a non-speech identifier for identifying the type of data stored in a data packet. The prior art RTP header merely includes a user definable marker bit. (*See* Page 6, line

20 in the Applicant's specification as originally filed.) The user definable marker bit can be used to mark frame boundaries in the packet stream. (*See* RFC 1889 Page 11, lines 13-18.) Thus, the combination of Wildfeuer and the prior art RTP header fail to teach or suggest the Applicant's claimed "non-speech identifier being stored in a header of the data packet."

Cited prior art Mori is directed to a system for converting audio to an optically readable code by using the data length (amount) of the audio to estimate the size of a dot code representing the audio. (*See* Col. 2, line 65 - Col. 3, line 3 and Col. 12, line 40 - Col. 13, line 41.) Mori does not teach or suggest a method or system for transmitting audio over a data network.

The above quoted claim language is in base Claims 1, 7, 14, 19 and 20. Claims 2-6 are dependent on Claim 1, Claims 8-13 are dependent on Claim 7 and Claims 15-18 are dependent on Claim 14 and thus include this limitation over the prior art.

Thus, neither Wildfeuer nor any of the cited prior art teach or suggest the Applicant's claimed method and apparatus which detects the state of the non-speech identifier in the header of the received data packet to determine if non-speech audio is stored in the payload of the data packet. Accordingly, the present invention as now claimed is believed to be patentably non-obvious over the cited art. In view of the foregoing, removal of the rejections under 35 U.S.C. § 103(a) and acceptance of Claims 1-20 are respectfully requested.

CONCLUSION

In view of the above remarks, it is believed that all claims (Claims 1-20) are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned at (978) 341-0036.

Respectfully submitted,

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